

**HB 3074 - H AMD 694**

By Representative Serben

1           Beginning on page 2, line 1, after "(3)" strike all material  
2 through "administration." on page 3, line 9 and insert the  
3 following:

4           "(a) To determine whether or not a defendant is a dependent of  
5 a person in the military service under this chapter, the plaintiff  
6 may serve on or mail via first-class mail to the defendant a  
7 written notice in substantially the following form:

8           "NOTICE: State and federal law provide protections to  
9 defendants who are on active duty in the military service, and to  
10 their dependents. Dependents of a service member are the service  
11 member's spouse, the service member's minor child, or an individual  
12 for whom the service member provided more than one-half of the  
13 individual's support for one hundred eighty days immediately  
14 preceding an application for relief.

15           One protection provided is the protection against the entry of  
16 a default judgment in certain circumstances. This notice only  
17 pertains to a defendant who is a dependent of a member of the  
18 national guard or a military reserve component under a call to  
19 active service for a period of more than thirty consecutive days.  
20 Other defendants in military service also have protections against  
21 default judgments not covered by this notice. If you are the  
22 dependent of a member of the national guard or a military reserve  
23 component under a call to active service for a period of more than  
24 thirty consecutive days, you should notify the plaintiff or the  
25 plaintiff's attorneys in writing of your status as such within  
26 twenty days of the receipt of this notice. If you fail to do so,  
27 then a court or an administrative tribunal may presume that you are  
28 not a dependent of an active duty member of the national guard or  
29 reserves, and proceed with the entry of an order of default and/or  
30 a default judgment without further proof of your status. Your  
31 response to the plaintiff or plaintiff's attorneys about your

1 status does not constitute an appearance for jurisdictional  
2 purposes in any pending litigation nor a waiver of your rights."

3 (b) If the notice is either served on the defendant twenty or  
4 more days prior to an application for an order of default or a  
5 default judgment, or mailed to the defendant more than twenty-three  
6 days prior to such application, and the defendant fails to timely  
7 respond, then for purposes of entry of an order of default or  
8 default judgment, the court or administrative tribunal may presume  
9 that the defendant is not a dependent of a person in the military  
10 service under this chapter."

**EFFECT:** Removes the ability of a plaintiff in a civil action to use the notice and presumption process created in the bill to determine whether a defendant is a service member under a call to active duty. Rather, the notice and presumption process may only be used by a plaintiff to determine whether a defendant is a **dependant** of an active duty service member who is entitled to the protections of the act.